SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/27/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-009666

FILED: _____

LEE ANNE WICK

LEE ANNE WICK
20518 NAPA ST
WINNETKA CA 91306-0000

v.

RB ELECTRIC

RICHARD J HERBERT

NORTH VALLEY JUSTICE COURT
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This Court has taken this matter under advisement, considered the record from the North Valley Justice Court, and reviewed the memoranda of the parties.

The case was tried in the North Valley Justice Court April 24, 2002. Lee Anne Wick was the Plaintiff (the Appellant herein); RB Electric, Inc. was the Defendant (now the Appellee). The court ruled for Defendant RB Electric, determining that Plaintiff Wick should take nothing on her complaint. Defendant was awarded attorney's fees in the amount of $1,558 and costs in the amount of $24. Additionally, the court determined that

attorney's fees would accrue interest at the rate of ten percent per annum from the date of judgment.[1]

An appellate court does not conduct trials and may consider only those matters in the record before it. The appellate court must presume that matters not contained in the record would support the trial court's ruling.[2] Appellant ordered no transcripts or tapes of the trial court's proceedings and provided none to this Court to explain the trial court's ruling.

Both Appellant and Appellee cite authority for their positions and include copies of written agreements containing the terms of employment signed or initialed by the opposing party; however, this court may review only those exhibits that are part of the record on appeal. This court, therefore, will resolve the matters of dispute on the basis of the parties' memoranda and the exhibits of record.

Appellant seeks payment for two weeks' vacation time, $3,846, that she says she earned after working for RB Electric for ". . . exactly one year"[3] in her terms. She also requests punitive damages of $11,538, and unspecified attorney's fees and expenses for traveling from California. She gives no bottom-line figure, apparently leaving unspecified determinations and the final figure for the court.

Appellant states correctly that the State of Arizona considers the employment relationship as contractual in nature;[4] however, she misconstrues the passage dealing with a separate writing by indicating – very generally and out of context – that the separate writing "takes preceden[ce] over standard company

[1] Judgment, North Valley Justice Court, April 24, 2002, Case No. CV2002-009666, p. 1.
[2] *Lewis v. Oliver*, 178 Ariz. 330, 873 P.2d 668 (App. 1994); *National Advertising Co. v. Arizona Department of Transportation*, 126 Ariz. 542, 617 P.2d 50 (App. 1980).
[3] Appellant's opening memorandum, p. 1.
[4] Appellant's opening memorandum, p. 3 (citing A.R.S. 23-1501[(1)] (2001)).

policy . . . ."[5] In reality, A.R.S. 23-1501(2) deals with overcoming the presumption of ***at will*** employment in termination actions, stating "[t]he employment relationship is severable at the pleasure of either the employee or the employer unless both the employee and the employer have signed a written contract to the contrary . . . ."[6] Neither the Appellant nor the Appellee raises any substantial arguments concerning the ***at will*** nature of Appellant's former employment.

Appellant bases her argument for payment of vacation time and associated expenses on the separate agreement.[7] Without defining terms, the separate agreement states, among other conditions, that Appellant would receive ". . . [v]acation pay . . . [for] two weeks after the first year . . . ."[18] Appellant indicates neither the starting date of her employment, nor the date of her last day on the job.[19] Appellee, however, indicates that Appellant began working for RB Electric October 2, 2000[20] and was terminated on September 28, 2001[21] – 362 days later.[22]

Appellant indicated by her signature October 2, 2000 on the Employee Manual that she understood that her employment with RB Electric would be ***at will***.[23] Nothing in the separate agreement sought to overcome that understanding. Moreover, the Employee's Manual indicated that if the employee was unclear as to the company's policy, that the employee should ". . . contact [the company's] Human Resources [department] for clarification as soon as possible."[24] Though both made references to a year, neither Appellee nor Appellant defined a *year*. This court,

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[5] Appellant's opening memorandum, p. 3 (citing A.R.S. 23-1501[(2)] (2001)) and p. 1 (indicating how the separate agreement takes precedence).
[6] A.R.S. 23-1501(2) (2001).
[7] Appellant's opening memorandum, p. 1; Defendant's Exhibit 1, p. 1.
[18] Defendant's Exhibit 1, p. 1.
[19] See generally, Appellant's opening memorandum.
[20] Appellee's responsive memorandum, p. 2.
[21] *Id*.
[22] *Id*., p. 4.
[23] Defendant's Exhibit 1, p. 2.
[24] *Id*.

therefore, will look first to the plain meaning of the term. The following are definitions from two different sources:

> **YEAR.** The period in which the revolution of the earth round the sun, and the accompanying changes in the order of nature, are completed. Generally, when a statute speaks of a year, twelve calendar, and not lunar, months are intended. Cro.Jac. 166. The year is either astronomical, ecclesiastical, or regnal, beginning on the 1st of January, or 25th of March, or the day of the sovereign's accession. Wharton.
>
> The civil year differs from the astronomical, the latter being composed of three hundred and sixty-five days, five hours, forth-eight minutes, forty-six seconds and a fraction, while the former consists sometimes of three hundred and sixty-five days, and at others, in leap-years, of three hundred and sixty-six days.
>
> When the period of a "year" is named, a calendar year is generally intended, but the subject matter or context of statute or contract in which the term is found or to which it relates may alter its meaning (citation omitted).[15]

And:

> ... period of about 365¼ solar days required for one revolution of the earth around the sun **b**: the time required for the apparent sun to return to an arbitrary fixed or moving reference point in the sky **c**: the time in which a planet completes a revolution about the sun (a *year* of Jupiter)....[16]

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[15] Black's Law Dictionary 1790 (Henry Campbell Black, Ed., 4th Edition, West Publishing, 1965.

[16] Merriam-Webster Online, Collegiate Dictionary, *year* http://www.m-w.com/cgi-bin/dictionary (assessed September 20, 2002).

This court deems *the most likely plain meaning of the term "year" would mean a calendar year consisting of 365¼ days.* This court now turns to how each party might have understood *a year*.

In the section dealing with Vacation Leave in its Employee Manual, Appellee discusses the ". . . employee's anniversary date [which is] the ***first day on the job*** with the Company (emphasis added) . . . ."[17] In the section dealing with Sick Leave, the company discusses the ". . . ***one year anniversary of [employee's] hire date*** (emphasis added) . . . ."[18] There is no specific definition of the term "one year" in the Employee Manual.

Appellant's understanding of the term *"year"* likewise does not aid the court. In her reply memorandum, Appellant describes her concept of a year as ". . . 52 weeks which is exactly one year."[19] Because it agrees with *none* of the dictionary definitions provided above, this court cannot agree with Appellant's contention. Fifty-two weeks gives too loose an understanding of a year; similarly, four weeks only approximates a month and would be true of February alone, and even then not during leap years.

An age-old tenet of contract law is that any uncertainty in the language should be construed against the drafter.[20] The rule dealing with such construction, however, is subordinate to the rule that the intent of the parties should govern.[21] Because neither party indicates unambiguously what is meant by the term *"year"*, this court concludes that the term was ambiguous, and therefore, should be construed given its plain meaning of 365-[1/4]

[17] Defendant's Exhibit 1, p. 5.
[18] *Id*.
[19] Appellant's reply memorandum, p. 1.
[20] Taylor v. State Farm Mut. Auto. Ins. Co., 175 Ariz. 148, 158, 854 P.2d 1134, 1144, n. 9.
[21] Polk v. Koerner, 111 Ariz. 493, 495, 533 P.2d 660, 662.

days. The trial court had sufficient basis on which to rest its ruling.

This court concludes that Appellant's first day on the job was October 2, 2000, and that she was terminated September 28, 2001. Here termination was three days short of what would have been her anniversary date, October 2, 2001. Because an essential condition of earning the two-weeks' vacation – working for the Appellee company a year – was not met, Appellant did not earn the two-week's vacation for which she could claim compensation.

IT IS THEREFORE ORDERED affirming the judgment of the North Valley Justice Court.

IT IS FURTHER ORDERED remanding this case to the North Valley Justice Court for all future proceedings.